Transportation Appeal Tribunal of Canada

For the period ending March 31, 2010

Departmental Performance Report

The Honourable Chuck Strahl, P.C., M.P.
Minister of Transport, Infrastructure and Communities

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CHAIRPERSON & CEO'S MESSAGE

It is once again my privilege to report the activities of the Transportation Appeal Tribunal of Canada (or the "Tribunal").

The reporting period of 2009-2010 represents almost 24 years of service by the Tribunal which, together with its predecessor the Civil Aviation Tribunal, has delivered quality service to Canadians.

I am pleased to confirm that the Tribunal has made progress and innovations over the past year while keeping up with its expanding mandate to include cases under the *Marine Transportation Security Act* and the *Canada Shipping Act*, 2001. The passage of the *Marine Transportation Security Regulations* in November 2006 with its in force date of November 2007 brings to fruition the expanded multimodal mandate of the Tribunal. Additionally, the *International Bridges and Tunnels Act* has received Royal Assent. This Act confirms the federal government's exclusive jurisdiction over international bridges and tunnels. It establishes a system of administrative monetary penalties for designated infractions of the legislation which may be reviewed through the Tribunal 's two-level hearing process (Review and Appeal).

The Tribunal is a quasi-judicial body which adjudicates matters that have a serious impact on the livelihood and operations of the aviation, rail and marine sectors. It fulfills the essential role of providing an independent review of ministerial enforcement and licensing actions taken under various federal transportation Acts.

The Tribunal continues to conduct itself in an open, impartial manner consistent with procedural fairness and the rules of natural justice. The Tribunal encourages the use of pre-hearing conferences to assist the parties appearing before it, to identify the issues for determination by the Tribunal and to disclose and exchange documents. This reduces the length of hearings and avoids last-minute adjournments necessitated by late disclosure. This becomes an important factor given the current complexity of hearings with parties' representatives requesting hearings from five to twenty days in length.

The program's effectiveness can be measured by its ability to provide the transportation community with the opportunity to have ministerial decisions reviewed fairly, equitably and within a reasonable period of time. The average lapsed time between the conclusion of a review hearing and the issuance of a determination for this reporting period is 130 days and 120 days for an appeal. This brings the hearing process to a timely conclusion for both parties appearing before it.

J. Richard W. Hall
Chairperson and Chief Executive Officer

SECTION I: DEPARTMENTAL OVERVIEW

Raison d'être and Responsibilities

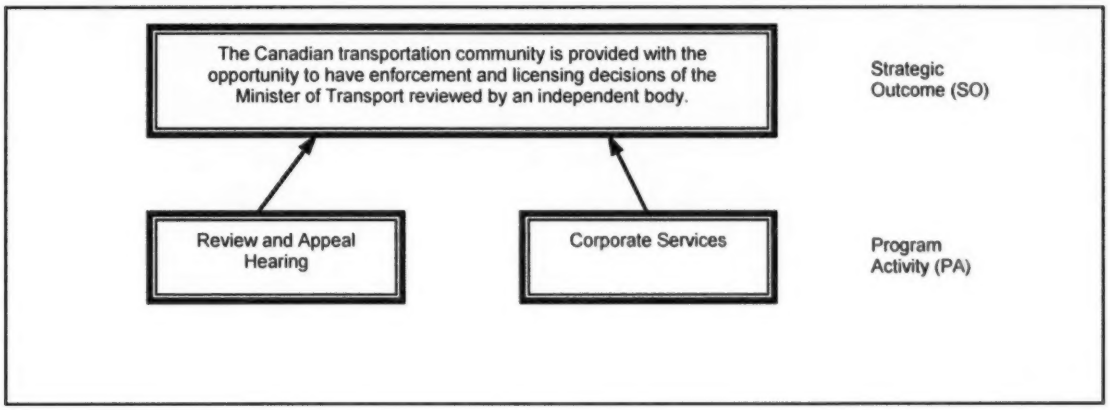
The mandate and the jurisdiction of the Transportation Appeal Tribunal of Canada are provided for by the *Transportation Appeal Tribunal of Canada Act*. The Tribunal's principal mandate as a multimodal review body is to hold Review and Appeal hearings at the request of interested parties with respect to certain administrative actions taken under various federal transportation Acts.

The objective of the program is to provide the transportation community with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body. The Minister's enforcement and licensing decisions may include the imposition of monetary penalties or the suspension, cancellation, refusal to renew or refusal to issue or amend documents of entitlement on medical or other grounds. The person or corporation affected is referred to as the document holder.

These decisions are reviewed through a two-level hearing process: Review and Appeal. All hearings are to be held expeditiously and informally, in accordance with the rules of fairness and natural justice.

At the conclusion of a hearing, the Tribunal may confirm the Minister's decision, substitute its own decision, or refer the matter back to the Minister for reconsideration.

Strategic Outcome and Program Activity Architecture (PAA)


The Canadian transportation community is provided with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.
Strategic Outcome (SO)
Review and Appeal Hearing
Corporate Services
Program Activity (PA)

Summary of Performance

2009–10 Financial Resources (thousands of dollars)

Planned Spending	Total Authorities	Actual Spending
1,337.0	1,788.8	1,416.9

2009–10 Human Resources (FTEs)

Planned	Actual	Difference
12	8	4

Strategic Outcome: The Canadian transportation community is provided with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.		
Performance Indicators	**Targets**	**2009–10 Performance**
% of disposition of review and appeal hearings within 90 days of request for a hearing.	100% decisions rendered within 90 days.	The average lapsed time between the conclusion of a Review Hearing and the issuance of a determination was on average 130 days for a review and 120 days for an Appeal Hearing. The increase in lapsed time was caused by the increased complexities of cases brought before the Tribunal.
% of hearing Members provided with training or refresher courses.	100% of hearing Members provided with training within 120 days of appointment.	During fiscal year 2009-2010, PCO appointed one Member to the Tribunal who was provided training. With the anticipated pending appointments of new Members, the Tribunal plans to hold an annual seminar in 2011. This will ensure that both staff and Members are apprised of recent developments in administrative law and transportation legislative issues.
% of registry staff provided with training.	100% of staff provided with training at fiscal year end.	As part of their learning plans, registry staff participated in the three-day training session.
% of decisions published on Web site.	100% of decisions are published on our Web site within 120 days of the hearing.	All decisions are published within 120 days of the hearing, as set out in our targets.* *Except for medical cases and in-camera hearings where information is kept confidential.

(Thousands of dollars)

Program Activity	2008–09 Actual Spending	2009–10[1]				Alignment to Government of Canada Outcome
		Main Estimates	Planned Spending	Total Authorities	Actual Spending	
Review and Appeal Hearings	1,750.3	1,132.0	1,132.0	1,523.2	1,165.6	A safe and secure Canada The Transportation Appeal Tribunal of Canada reports to Parliament through the Minister of Transport. Its clients currently are the aviation, rail and marine communities and Transport Canada. The Tribunal serves the transportation public by contributing to a safe and efficient oversight process for transportation safety and security in Canada.
Internal Services	-	205.0	205.0	265.6	263.6	
Total	1,750.3	1,337.0	1,337.0	1,766.0	1,416.9	

[1] Commencing in the 2009-10 Estimates cycle, the resources for Program Activity: Internal Service is displayed separately from other program activities; they are no longer distributed among the remaining program activities, as was the case in previous Main Estimates. This has affected the comparability of spending and FTE information by Program Activity between fiscal years.

Contribution of Priorities to Strategic Outcome

Operational Priorities	Type	Status	Linkages to Strategic Outcome
Hold hearings expeditiously and informally	Ongoing	The Tribunal mostly met expectations under this priority: By ensuring that services were available to informally resolve transportation-related disputes in a manner that is simple, rapid, less litigious and less costly; By ensuring that hearings were held expeditiously and informally; By the timely disposition of review and appeal hearings within service standards; By ensuring that hearings were being conducted in accordance with the rules of fairness and natural justice; By the use of pre-hearing conferences to streamline and expedite the hearing process; By the quality and consistency of decision-making.	To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body. By reviewing ministerial decisions fairly, equitably and within a reasonable period of time. Average lapsed time between the conclusion of a review hearing and issuance of a determination is 70 days and 85 days for an appeal. Our target is set at 90 days as per our Performance Management Framework. The Tribunal encourages the use of pre-hearing conferences to assist parties to identify issues for determination and to disclose and exchange documents. This reduces the length of hearings and avoids last-minute adjournments necessitated by late disclosure.

Management Priorities	Type	Status	Linkages to Strategic Outcome(s)
Business Continuity Plan (BCP)	Previously committed to	The Tribunal successfully met all expectations under this priority. A BCP has been in place since 2007 and is reviewed on a yearly basis to ensure and maintain its business continuity plan readiness.	To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body. Plans, measures and arrangements are in place to ensure the continuous delivery of critical services, permitting the organization to recover its data and assets in order to continue to provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body in the event of a business interruption.

Increase awareness of the Transportation Appeal Tribunal of Canada with respect to its mission, mandate, role and results achieved	Previously committed to	The Tribunal successfully met all expectations under this priority: Enhancements and improvements to the Tribunal Web site along with making 3500 decisions available to the public has increased awareness and provide better information among the transportation community and key stakeholders with respect to the Tribunal's mandate and services.	To provide the Canadian transportation community with the opportunity to have administrative actions under federal transportation Acts reviewed by an independent body. Improved awareness and better information among the Transportation community and key stakeholders with respect to the Tribunal's mandate, services and decisions.

Risk Analysis

As a micro-organization, the Tribunal's main risk is the increased pressure on its resources from an increased and unpredictable workload, as well as the need to meet the obligations of government-wide horizontal initiatives. The Tribunal's activities are driven by external demands that it can only react to rather than plan for.

Even though the demand for services has remained relatively stable, the Tribunal has had to manage ongoing increases in operating costs, such as the per diem(s) for Members, hearing rooms, court reporters, travel charges, information technology upgrades and translation costs, while its funding budget has remained stable.

It must be noted, however, that the most important risk is the number and skill set of Members available to conduct hearings. In order to deliver on our program, the Tribunal needs to have Members with the right mix of skills and talents in all three modes of transportation.

Expenditure Profile

(Thousands of dollars)

Spending Trends

	2007-2008	2008-2009	2009-2010
Planned Spending	1,433	1,660	1,132
Total Authorities	1,597	1,834	1,523.2
Actual Spending	1,523	1,749	1,165.6

For the 2007-2008 to the 2009-2010 periods, total authorities include all parliamentary appropriation: main estimates, supplementary estimates and carry-forward adjustments.

Funding in the amount of $98,000 was received to support the implementation of railway safety initiatives and to enhance the Grade Crossing Improvement Program. This initiative is in support of the Canada's Economic Action Plan, under Action to Support Business and Communities. The funding was not utilized in the fiscal year as no Rail Members were appointed.

Voted and Statutory Items

(Thousands of dollars)

Vote # or Statutory Item (S)	Truncated Vote or Statutory Wording	2007–08 Actual Spending	2008–09 Actual Spending	2009–10 Main Estimates	2009–10 Actual Spending
1	Operating expenditures	1,411.1	1,640.6	1,219.2	1,313.4
(S)	Contributions to employee benefit plans	111.9	108.0	118.1	115.7
	Total	1,523.0	1,748.6	1.337.3	1,429.1

SECTION II: ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME

Strategic Outcome

The strategic outcome of the Tribunal is to provide the Canadian transportation community with the opportunity to have enforcement and licensing decisions of the Minister of transport reviewed by an independent body.

The Tribunal's only activity is the provision of an independent review process for aviation, rail and marine by providing document holders with the opportunity to proceed with a hearing. The Tribunal represents the only forum ensuring that document holders have access to an independent assessment governed by considerations of natural justice. Its role does not overlap with, nor is it duplicated by, any other agency, board or commission. It is unique in the transportation field, in that its function is entirely adjudicative.

Program Activity by Strategic Outcome

Program Activity: Review and Appeal Hearings					
2009–10 Financial Resources (Thousands of dollars)			2009–10 Human Resources (FTEs)		
Planned Spending	**Total Authorities**	**Actual Spending**	**Planned**	**Actual**	**Difference**
1,337.0	1,788.8	1,429.2	12	8	2

Expected Results	Performance Indicators	Targets	Performance Status	Performance Summary
Access to an independent assessment governed by considerations of natural justice	Hearings conducted in a timely manner	100% of decisions rendered within 90 days	Mostly met	The average lapsed time between the conclusion of a Review Hearing and the issuance of a determination was on average 130 days for a Review Hearingand 120 days for an Appeal Hearing for fiscal year 2009-2010. The increase in lapsed time was caused by the increased complexities of cases brought before the Tribunal.
Plans, measures and arrangements are in	Business Continuity Plan (BCP)	March 2009	Mostly met	A BCP has been in place since 2007 and

place to ensure the continuous delivery of critical services, which permits the organization to recover its data and assets	developed Tools to maintain business continuity plan readiness, such as contingency plan, emergency response plan, etc.			is reviewed on a yearly basis to ensure and maintain its business continuity plan readiness.
Improved awareness and better information among the Transportation community and key stakeholders with respect to the Tribunal's mandate, services and decisions	Tribunal information accessible to the lay person in a timely manner	June 2009	Successfully met	3500 decisions were uploaded onto the Tribunal's Web site in both official languages.

Canada's Economic Action Plan (CEAP)

Funding in the amount of $98,000 was received to support the implementation of railway safety initiatives and to enhance the Grade Crossing Improvement Program. This initiative is in support of the Canada's Economic Action Plan, under Action to Support Business and Communities. The funding was not utilized in the fiscal year as no Rail Members were appointed.

Benefits for Canadians

The Tribunal is unique in the transportation field in that its sole function is adjudicative. It provides document holders and even passengers with the opportunity to have an independent hearing that is informal, expeditious and fair.

The cases before the Tribunal are regulatory in nature and concern matters of safety and security.

The Tribunal's performance indicators verify that these cases are conducted in a timely manner and that Tribunal information is accessible on its Web site.

The Tribunal process is able to quickly identify concerns in the transportation field of a technical or legislative nature leading to necessary amendments to legislation for the benefit of all Canadians through the enhancement and maintenance of transportation safety and security in Canada.

Performance Analysis

The program's effectiveness can be measured by its ability to provide the transportation community with the opportunity to have ministerial decisions reviewed fairly, equitably and within a reasonable period of time.

The average lapsed time between the conclusion of a Review Hearing and the issuance of a determination is 130 days and 120 days for an Appeal Hearing. This brings the hearing process to a timely conclusion for both parties appearing before the Tribunal.

The Tribunal encourages the use of pre-hearing conferences to assist the parties appearing before it, to identify the issues for determination by the Tribunal and to disclose and exchange documents. This reduces the length of hearings and avoids last-minute adjournments necessitated by late disclosure.

Facilitating discussions before the parties have also been particularly effective in settling licence suspensions and the refusal to renew on medical grounds without the necessity of a hearing. The Tribunal Registrars contact the parties to schedule mutually agreed hearing dates to the extent possible to avoid unnecessary adjournments.

In 2008-2009, the Tribunal referred 2 aviation cases back to the Minister of Transport for reconsideration, pursuant to section 7.1 of the *Aeronautics Act*, the Tribunal lacking the power to substitute its own decision for that of the Minister in these cases. The Minister confirmed its original decision in one case, and we are still awaiting the outcome in the other case.

In 2009-2010, the Tribunal did not refer any cases back to the Minister for reconsideration.

Lessons Learned

The Tribunal's activity is the provision of an independent review process for aviation, rail and marine by providing document holders with the opportunity to proceed with a hearing.

Lessons learned can be defined as experiences acquired in the execution of programs and services that can provide value-added direction to future plans and efforts to achieve results. A plan must be in place to address and follow up on these actions and directions in future Report on Plans and Priorities.

To promote communication between the parties with a view to settlement, the Registry encourages early disclosure of documents to the applicant. In order to resolve outstanding issues that may delay the scheduling of the hearing, the registry will arrange a teleconference with a Tribunal Member.

These experiences in aviation sector cases will prove valuable as marine and rail sector cases increase in complexity and will provide precedents in training sessions.

SECTION III: SUPPLEMENTARY INFORMATION

Financial Highlights

Condensed Statement of Financial Position At End of Year (March 31, 2010)	2008-09	2009-10
ASSETS		
Financial Assets	38,702	27,237
Non-Financial Assets	11,937	10,680
TOTAL	**50,639**	**37,917**
Condensed Statement of Financial Position At End of Year (March 31, 2010)	2008-09	2009-10
LIABILITIES		
Accounts Payable and Accrued Liabilities	156 037	181,324
Vacation Pay and Compensatory Leave	57 442	45,719
Employee Severance Benefits	173 251	139,987
EQUITY CANADA	(336 091)	(329,113)
TOTAL	**50 639**	**37,917**
Condensed Statement of Financial Position At End of Year (March 31, 2010)	2008-09	2009-10
EXPENSES AND REVENUES		
Total Expenses	1 967 791	1 611,963
Total Revenues	-	-
NET COST OF OPERATIONS	**1 967 791***	**1 611,963***

* includes services received without charge

Financial Statements

In its Annual Report for the fiscal year 2009-2010, the Tribunal includes financial statements that provide an accounting of the Tribunal's administration of its public financial affairs and resources (www.tatc.gc.ca).

Other Items of Interest

Contacts for Further Information

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